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Of Attorneys for Plaintiff

MICHELE DOE, an individual proceeding
under a pseudonym,

Plaintiff,

v.

DUFUR SCHOOL DISTRICT #29, an
Oregon Public School District, authorized and
chartered by the laws of the State of Oregon;
**DUFUR SCHOOL DISTRICT #29 SCHOOL
BOARD**, Oregon corporate body authorized
and chartered by the laws of the State of
Oregon; **JACK HENDERSON**, individually
and in his official capacity as Superintendent
and Athletic Director of the Dufur School
District #29; **LEO BAPTISTE**, individually
and in his official capacity as former principal
of Dufur High School; and **McKENZIE
HENDERSON**, individually and in her official
capacity as guidance counselor of Dufur High
School,

Defendants.

CASE NO. 3:19-cv-289

COMPLAINT

(Jury Trial Demanded)

COMPLAINT

COMES NOW the Plaintiff, Michele Doe, by and through her attorneys, hereby states as follows:

JURISDICTION AND VENUE

1. Jurisdiction lies under 28 U.S.C. §1331 inasmuch as this complaint presents a federal question.
2. Jurisdiction over the state claims arises under 28 U.S.C. §1367(a).
3. Venue in the Federal District Court of Oregon, Portland Division, is appropriate pursuant to 28 U.S.C. §1391 because the occurrences complained of took place in Wasco County, Oregon.

PARTIES

4. Plaintiff Michele Doe (hereinafter “Doe” or “Plaintiff”) was born on June 6, 2000, and at all times material herein lived in Dufur, Oregon and attended Dufur High School in Dufur School District #29 until her graduation in Spring 2018.
5. Doe is proceeding under a pseudonym because she is the victim of childhood sexual abuse and publicity of her true identity will cause further unwarranted trauma. Plaintiff’s true identity is known to Defendants.
6. At all times material herein, Dufur High School (hereinafter, the “School”) was located in Dufur, Oregon, as part of Defendant Dufur School District #29 (hereinafter, the “District”). The District is a corporate body authorized and chartered by the laws of

the State of Oregon.

7. At all times material herein, Defendant Dufur School Board (hereinafter, the “Board”) was authorized by the laws of the State of Oregon to transact all business within the jurisdiction of the District. This includes establishing all policies, procedures and rules of the District, including those related to sexual abuse prevention, detection and investigation.

8. At all times material herein, Defendant Jack Henderson (hereinafter, “Henderson”) was the superintendent for the District. Upon information and belief, in his capacity as superintendent, Henderson had the authority and duty to implement district-wide all policies, procedures and rules adopted by the Board. This included implementation of any policies, procedures or training related to sexual abuse prevention, detection, investigation and reporting.

9. At all times material herein, Defendant Leo Baptiste (hereinafter, “Baptiste”) was the Principal of the School. Upon information and belief, in his capacity as Principal, Baptiste had the authority and duty to implement school-wide all policies, procedures and rules adopted by Henderson and the Board. This included implementation of any policies, procedures or training related to sexual abuse prevention, detection, reporting and investigation.

10. At all times material herein, Defendant McKenzie Henderson was the guidance counselor of the School. Upon information and belief, in her capacity as guidance counselor for the School, McKenzie Henderson had a duty to follow and adhere

to any school-wide policies, procedures and rules adopted by Henderson and the Board. This included any policies, procedures or training related to sexual abuse prevention, detection and investigation.

FACTUAL ALLEGATIONS

11. Upon information and belief, in or around 2014 the District and School hired Ty Wyman (hereinafter, “Wyman”), an adult male born February 28, 1990, to work as a track coach, bus driver, and custodian. As a coach, bus driver, and custodian, the District and School empowered Wyman to perform all duties of a staff member, including supervision, discipline and developing relationships with students. At the time of his hire, Wyman was close friends with Henderson and his daughter, defendant McKenzie Henderson. McKenzie Henderson worked as a guidance counselor at the School and was close friends with Wyman’s wife. McKenzie Henderson would often visit Wyman’s home, located directly across the street and directly visible from the School.

12. While working at the District and School, and for purpose of furthering his assigned duties as a coach, custodian, bus driver and generally a staff member, Wyman befriended Plaintiff and her family; gained the families’ and Plaintiff’s trust and confidence as an authority figure and mentor to Plaintiff; gained the permission, acquiescence and support of Plaintiff and her family to spend substantial periods of time with Plaintiff; and sought and gained support and instruction of the District and School and its administration that Plaintiff was to have respect for Wyman’s authority and to comply with his instructions and requests.

13. For purposes of furthering his duties as a coach, custodian, bus driver and generally a staff member, Wyman also sought and gained the respect, admiration, friendship and obedience of Plaintiff. As a result, Plaintiff was conditioned to trust Wyman, to comply with Wyman's direction, and to respect Wyman as a person of authority. The conduct described in paragraphs 11 – 13 above is hereinafter collectively referred to as "Grooming."

14. Beginning in October 2016, Plaintiff's junior year, Wyman, who was twenty-six (26) years old at the time, began Grooming Plaintiff who was sixteen (16) years old at the time. This included Wyman contacting Plaintiff by text message directly rather than through her parents.

15. In January 2017 Wyman expressed to Plaintiff that he had feelings for her in a sexual way. Wyman began stalking Turner around the School and noticeably singling Plaintiff out for special attention, including (a) sitting with her for long periods during classes; (b) talking with her during her class for long periods of time; (c) talking intimately with her in the hallway between classes; and (d) exchanging treats and snacks with each other at School, specifically during either her classes or in his custodian's office. Upon information and belief, Wyman engaged in these activities openly and his conduct was observable by School teachers and staff. Upon information and belief, no action, follow-up or investigation occurred despite Plaintiff's and Wyman's conspicuous relationship.

16. In early 2017, Plaintiff brought food from McDonald's to Wyman in the janitor's office. Principal Baptiste saw Plaintiff walking out of the janitor's office and

instructed her to report to guidance counselor McKenzie Henderson to discuss the inappropriate nature of her conduct and for possible follow-up with Wyman. McKenzie Henderson – who at the time was close friends with Wyman and his wife – disregarded the incident and did not report or investigate further. Upon information and belief, no action, follow-up or investigation occurred by anyone at the School.

17. Around the same time, during and after School hours, Plaintiff often visited Wyman's home located directly across the street and directly visible from the School. While there, McKenzie Henderson would often stop by to visit Wyman's wife. During such visits, McKenzie Henderson would often see Plaintiff at Wyman's house. Upon information and belief, no action, follow-up or investigation occurred.

18. Around the same time, as a result of Wyman's Grooming, Plaintiff began confiding and trusting in Wyman.

19. In late January 2017 Wyman began engaging Plaintiff in sexual contact. Wyman started hugging Plaintiff and kissing her. This sexual abuse occurred both at School and Wyman's house. Soon the abuse escalated, including Wyman groping Plaintiff's breasts and exposing his penis to her. Wyman also instructed Plaintiff to send him pictures of her breasts and buttocks and Plaintiff would comply. Wyman would then instruct her to erase any such communications.

20. By February 2017, information about Plaintiff's and Wyman's relationship was discussed widely throughout the School and, upon information and belief, had become known to certain School staff. Despite knowledge of this information, neither the District,

the School, Henderson, Baptiste nor any staff reported this information, investigated further, or took action to prevent Wyman from abusing Plaintiff.

21. The District maintains and periodically edits certain policies or procedures concerning sexual assault and harassment. One such procedure, titled “Sexual Harassment Complaint Procedure,” § JBA/GBN-AR (last revised March 3, 2014), delineates the following policy: “Any sexual harassment information (complaints, rumors, etc.) shall be presented to the principal, compliance officer or superintendent.” The same procedure later requires that “[r]eports of sexual contact with a student shall be given to law enforcement representatives or Services to Children and Families representatives as possible child abuse.”

22. Oregon Revised Statute 419B.015 also requires educators to report any suspicions of child abuse to Department of Human Services child welfare or to a law enforcement agency within the county where the abuse occurred. Oregon Revised Statute 339.388 further requires all school employees to report any reasonable suspicion of abuse or sexual conduct to a person specifically designated by the District.

23. By the end of February 2017, despite rumors and conspicuous signs of Wyman’s abuse of Plaintiff, no steps were taken by Defendants or their agents to investigate, report or prevent Wyman’s future abuse of Plaintiff.

24. In March 2017, the nature of Wyman’s sexual abuse of Plaintiff escalated further. One day, Wyman bought Plaintiff alcohol and took Plaintiff back to Wyman’s house, located directly across the street from the School. While there, Wyman forcefully

put his hands down Plaintiff's pants and digitally penetrated her vagina. Plaintiff removed Wyman's hands from her pants and immediately left Wyman's home. Soon after this incident, Plaintiff cut off all communication with Wyman. In response, Wyman threatened to commit suicide unless plaintiff returned to him, but plaintiff refused.

25. After Plaintiff cut off her relationship with Wyman, Wyman began grooming another female student at School, engaging in exactly the same overt predatory behavior, including: stalking the student both in the halls and classrooms; sitting next to her during class in view of Plaintiff's teachers; talking intimately with her; and exchanging treats and gifts. Despite knowledge of this conduct, Defendants again failed to investigate, report or prevent Wyman's conspicuous predatory behavior with this alternate female student.

26. In total, at minimum five (5) employees of the District and School, including three teachers, a guidance counselor and the School principal, witnessed Wyman's inappropriate and predatory behavior both on and off campus, yet took no steps to report, investigate or otherwise protect Plaintiff and others from Wyman.

27. In May 2017 Wyman was arrested and later indicted on eight counts related to sexual assault and misconduct. In August 2018, Wyman plead guilty to (a) Sexual Abuse in the Second Degree; (b) Attempt to Commit A Felony – Unlawful Sexual Penetration in the First Degree; and (c) Official Misconduct in the First Degree. Wyman was sentenced to multiple years in jail with earliest possible release scheduled for 2021.

28. Wyman was not the first adult connected to the District and School to engage in sexual abuse of underage students. In 2010-2011, there were widespread rumors

that Angela Lindell, a Dufer School District coach on the traveling volleyball team, had sexual relationships with multiple underage boys. This information became known to school staff, yet initially no steps were taken to further report or investigate such rumors.

29. In 2012, Angela Lindell plead guilty and was convicted of harassment stemming from sexual abuse of multiple minor students at the School.

30. Angela Lindell is the daughter of Meredith Lindell. At all material times Meredith Lindell was one of Plaintiff's teachers who witnessed Wyman's predatory behavior, including sitting next to and talking with Plaintiff during Meredith Lindell's class.

31. Despite the discovery, arrest and conviction of their agent Angela Lindell, Defendants did not take any steps to train or educate its staff on how to identify, investigate, report or prevent suspected sexual abuse. Defendants also failed to implement and train staff on existing rules and procedures concerning sexual abuse after the discovery and conviction of Angela Lindell. Defendants were on notice as to the inadequacy of training of staff and volunteers to detect, investigate and report any sex abuse of students.

32. Upon information and belief, throughout the period of Wyman's grooming of Plaintiff for sexual abuse while Plaintiff attended the School and during the time Wyman sexually abused Plaintiff on and off School premises, all of which occurred in plain view of Defendants, Defendants failed to question Wyman about the nature of his relationship with Plaintiff, failed to investigate rumors of their sexual relationship and failed to report reasonable suspicion of child abuse. Instead, Defendants relied upon Wyman, a pedophile, to create and enforce an appropriate boundary between himself and students, including

Plaintiff. In so doing, Defendants acted with reckless indifference to the safety of students, including Plaintiff, and/or tacitly authorized Wyman's misconduct to continue.

FIRST CLAIM FOR RELIEF

Civil Rights Claim – 8th and/or 14th Amendments – 42 USC § 1983

33. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 32 above.

34. Defendants were deliberately indifferent to Plaintiff's rights under the Eighth and/or Fourteenth Amendments of the U.S. Constitution in one or more of the following ways:

a. In failing to properly train all staff, employees, volunteers or coaches of the District and School on how to detect and identify predatory behavior. This failure led to the inability and/or unwillingness of Defendants and other School and District employees to recognize or appreciate the significance of Wyman's grooming and overt predatory behavior vis-à-vis Plaintiff and other minor students;

b. In failing to properly train all staff, employees, volunteers or coaches of the District and School in the proper implementation of their policies for reporting and responding to inappropriate involvement by a staff member and student. This failure allowed Wyman's conspicuous predatory behavior to go unchecked as detailed above;

c. In failing to report to police or DHS reasonable suspicious of child sexual abuse based on widely circulated information of Wyman's sexual relationship with Plaintiff, despite Defendants' own duly promulgated rules and procedures requiring such reporting; and

d. In failing to educate students as to recognizing and reporting predatory behavior.

35. As a direct result of the actions and inactions of Defendants as set forth in paragraphs above, Plaintiff endured and suffered severe physical, mental and emotional distress. Plaintiff is entitled to compensatory damages in whatever amount the jury concludes is appropriate.

36. The actions of Defendants were recklessly indifferent to the civil rights of Plaintiff, and callously disregarded Plaintiff's physical safety, and punitive damages should be awarded in whatever amount the jury concludes is appropriate.

37. Plaintiff is entitled to her necessary and reasonable attorney fees and costs incurred in the prosecution of this action.

SECOND CLAIM FOR RELIEF

Civil Rights Claim – 8th and/or 14th Amendments – 42 USC § 1983 (*Monell* Claims)

38. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 37, above.

39. The moving forces that resulted in the deprivation of the Eighth and/or Fourteenth Amendment rights of Plaintiff were the following policies, customs or practices of Defendants:

a. a policy, custom or practice of not providing training to all School and District staff members on how to identify, investigate, report and prevent predatory behavior;

b. a policy, custom or practice of not adopting sufficient policies and procedures as to how to identify, investigate, report and prevent predatory behavior;

c. A policy, custom or practice of not implementing policies and procedures as to how to identify, investigate, report and prevent predatory behavior; and

d. A policy, custom or practice of not reporting or otherwise ignoring information indicating sexual conduct by staff toward students.

40. The policies of Defendants posed a substantial risk of causing significant harm to students, including Plaintiff, and Defendants were aware of the risk.

41. As a direct result of the policies, customs or practices of Defendants, Plaintiff was sexually abused by Wyman. As a direct result of the policies, customs or practices of Defendants, Plaintiff endured and suffered severe physical, mental and emotional distress. Plaintiff is entitled to compensatory damages in whatever amount the jury concludes is appropriate.

42. The actions of Defendants were recklessly indifferent to the civil rights of Plaintiff, and callously disregarded Plaintiff's physical safety, and punitive damages should be awarded in whatever amount the jury concludes is appropriate.

43. Plaintiff is entitled to her necessary and reasonable attorney fees and costs incurred in the prosecution of this action.

THIRD CLAIM FOR RELIEF

Civil Rights Claim – 8th and/or 14th Amendments – 42 USC § 1983 (Supervisory Liability)

44. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 43 above.

45. Defendants, in their supervisory capacities, were aware of the policies, customs or practices, as alleged above, and were aware that said policies, customs or practices created a substantial risk of causing harm to the students of the District and the School by endangering their physical, mental and emotional safety. Despite their knowledge, said supervisors allowed, approved of and ratified said policies, customs or practices.

46. Defendants Henderson, Baptiste, the Board, the School and the District, in their supervisory capacities, failed to adequately train staff, teachers and volunteers how to:

- a. identify or recognize suspicious or predatory behavior indicating a

risk of child sexual abuse by adult staff and volunteers;

b. investigate suspicious or predatory behavior by adult staff and volunteers;

c. report suspicious or predatory behavior by adult staff and volunteers;

d. prevent predatory behavior by adult staff and volunteers;

e. investigate and/or report all rumors of romantic or sexual-relationships between students and staff or volunteers as required by District policy; and,

f. implement or follow District policies and procedures on sexual assault and harassment.

47. Defendants were aware that the failure to train, set forth above, created a substantial risk of causing harm students.

48. Defendants, in their supervisory capacities, had actual and constructive notice that Wyman's inappropriate and predatory conduct constituted a threat to students including Plaintiff. Defendants were on actual or constructive notice based on Wyman's following overt and observable conduct:

a. Wyman engaged in intimate one-on-one conversations with Plaintiff in School hallways;

b. Wyman followed Plaintiff into her classes with no legitimate educational purpose;

c. Wyman remained in Plaintiff's classes, sitting next to her and talking to her for long periods of time, with no legitimate educational purpose;

d. Wyman spent time alone with Plaintiff in the custodian's office at the School building;

e. Plaintiff would bring treats and food to Wyman at School during school hours;

f. Plaintiff visited Wyman at his home – located directly across the street and within sight of the School – on many occasions, including during School hours;

g. Dufer School District employee McKenzie Henderson saw Plaintiff at Wyman's home on multiple occasions;

h. Baptiste observed Plaintiff delivering food to Wyman and instructed Plaintiff to discuss suspicious behavior with guidance counselor, McKenzie Henderson; and

i. McKenzie Henderson did in fact speak with Plaintiff about the aforementioned suspicious behavior.

49. As a direct result of the actions and inactions of Defendants discussed above, Plaintiff endured and suffered severe physical and emotional distress.

50. The actions of Defendants were recklessly indifferent to the civil rights of Plaintiff and callously disregarded her physical safety, and punitive damages should be awarded in whatever amount the jury concludes is appropriate.

51. Plaintiff is entitled to her necessary and reasonable attorney fees and costs incurred in the prosecution of this action.

FOURTH CLAIM FOR RELIEF

Negligence

52. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 51, above.

53. Defendants established a special relationship with Plaintiff once Plaintiff became a student of the District and School and held out to Plaintiff that their facilities were safe and trustworthy. The relationship created a duty on the part of Defendants to ensure that the facilities and services are as safe as possible from known dangers and to exercise reasonable care in the selection, training, supervision and retention of its staff, in including Wyman. Alternatively, or in conjunction with the above, Plaintiff had a special relationship with Defendants as a child entrusted to the care and control of Defendants *in loco parentis*. This special relationship created a duty of care on the part of Defendants to ensure Plaintiff's safety while a student.

54. On information and belief, Defendants acted negligently and created a foreseeable risk of Wyman abusing students, including Plaintiff, by failing to undertake reasonable child abuse prevention measures in one or more of the following ways:

- a. In failing to adequately supervise Wyman in his interactions and relationship with minors, including plaintiff;
- b. In failing to adequately train employees and/or volunteers, including

Wyman, in how to recognize, report and prevent child sexual abuse;

c. In failing to reasonably and adequately investigate and respond to information indicating that Wyman was engaging in an inappropriate and sexual contact with students, including Plaintiff;

d. In retaining Wyman after learning information indicating that he was engaging in inappropriate and sexual contact with students, including Plaintiff; and,

e. In failing to properly implement other reasonable child abuse prevention policies.

55. Any or all of Defendants' failures described above were substantial contributing and causal factors of all or some of Plaintiff's abuse and damages. Plaintiff endured and suffered severe physical, mental and emotional distress. Plaintiff is entitled to compensatory damages in whatever amount the jury concludes is appropriate.

56. Defendants' failures described above created a foreseeable risk that students in Defendants' care, including Plaintiff, would be sexually abused. Plaintiff's interest in being a protected and free from child sexual abuse was an interest of a kind that the law protects against negligent invasion.

57. Defendants' failures were direct and foreseeable causes of all or some of Plaintiff's abuse and damages, as alleged above. As a result and consequence of Defendants' negligence, Plaintiff has incurred economic and non-economic damages, and is entitled to compensatory damages in an amount to be determined by a jury.

FIFTH CLAIM FOR RELIEF

Sexual Battery of Child/Respondeat Superior

58. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 57, above.

59. While acting in the course and scope of his agency for the District and the School, Wyman engaged in harmful and offensive touching of Plaintiff, a minor, to which Plaintiff did not or could not consent.

60. As a direct result of Wyman's sexual abuse and breach of authority and trust, Plaintiff has incurred economic and non-economic damages, and is entitled to compensatory damages in an amount to be determined by a jury.

SIXTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress/Respondeat Superior

61. Plaintiff realleges and incorporates herein as though set forth in full paragraphs 1 through 60, above.

62. Wyman, while engaging in the Grooming process, knowingly and intentionally caused severe emotional distress and physical injury to Plaintiff when he sexually abused her as described above. In the alternative and/or in conjunction with the Grooming, acts committed within the course and scope of Wyman's employment with the District and the School led to and/or resulted in Wyman knowingly and intentionally causing severe emotional distress as a result of this sexual abuse, and the sexual abuse of

a child is beyond the bounds of all socially tolerable conduct.

63. As a direct result of Wyman's intentional infliction of emotional distress, Plaintiff has incurred economic and non-economic damages, and is entitled to compensatory damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays for judgment as follows:

On the First Claim for Relief, for judgment against Defendants for compensatory damages in whatever amount the jury concludes is appropriate, and for punitive damages in whatever amount the jury concludes is appropriate and for necessarily and reasonably incurred attorney fees and costs;

On the Second Claim for Relief, for judgment against Defendants for compensatory damages in whatever amount the jury concludes is appropriate, and for punitive damages in whatever amount the jury concludes is appropriate and for necessarily and reasonably incurred attorney fees and costs;

On the Third Claim for Relief, for judgment against Defendants for compensatory damages in whatever amount the jury concludes is appropriate, and for punitive damages in whatever amount the jury concludes is appropriate and for necessarily and reasonably incurred attorney fees and costs;

On the Fourth Claim for Relief, for judgment against Defendants, and each of them, for compensatory damages in whatever amount the jury concludes is appropriate, and for necessarily and reasonably incurred costs;

On the Fifth Claim for Relief, for judgment against Defendants, and each of them, for compensatory damages in whatever amount the jury concludes is appropriate, and for necessarily and reasonably incurred costs; and

On the Sixth Claim for Relief, for judgment against Defendants, and each of them, for compensatory damages in whatever amount the jury concludes is appropriate, and for necessarily and reasonably incurred costs.

DATED this 26th day of February, 2019.

/s/Peter B. Janci

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